

# UNIPHORE END USER LICENSE AGREEMENT

This End User License Agreement governs Customer's licensing and use of any Uniphore Products and/or Services obtained, accessed or purchased by a Customer. Uniphore and Customer are each individually a **"Party"** and collectively are the **"Parties"** to this Agreement.

## 1. BACKGROUND

### 1.1 Order of Precedence

The terms set forth herein shall control and take precedence over any other document, unless such document is in writing, signed by Uniphore, and specifically states that it shall supersede this Agreement, but only to the extent of such conflict and only for the Products and/or Services provided under that particular document. Preprinted terms on any purchase order or other document submitted by Customer to Uniphore shall not apply or supersede the terms herein, even if Uniphore signs or otherwise accepts such document.

### 1.2 Defined Terms

Capitalized terms used in this Agreement are defined where first used or as set forth in this Section 1.2.

(A) **"Agreement"** means this document together with any related schedules, addendums or exhibits, and Statements of Work or Order Forms executed hereunder between the Parties.

(B) **"Customer"** means the legal entity listed on the Purchase Document which purchases, licenses or otherwise uses or accesses the Products and/or Services.

(C) **"Customer Data"** means all electronic data including all documents, content, records, files and Personal Data received from Customer, and processed or stored by Uniphore as required for the provision of the Products and Services under this Agreement.

(D) **"Data Privacy Laws"** means all applicable current and future Laws regarding the protection of Personal Data as stored and/or processed by Uniphore in its provision of the Products and/or Services herein.

(E) **"Deliverable"** means any document, file, information, or report created and delivered to the Customer, if any, by Uniphore, as expressly designated and further described in the applicable Statement of Work.

(F) **"Documentation"** means Uniphore's Product manuals or other standard Products or Services documentation (and any amendments thereto) generally made available by Uniphore to its customers.

(H) **"Hosting Servers"** means those servers and other hardware and software that are used by Uniphore to provide the Products and Services, as determined by Uniphore in its sole discretion.

(I) “**including**” and its derivatives (such as “include” and “includes”) means including without limitation. This term is as defined, whether or not capitalized in the Agreement.

(J) “**Intellectual Property Rights**” means all right, title and interest, including copyrights, patents, trademarks, service marks, trade secrets, moral rights and other proprietary and intellectual property rights of whatever nature.

(K) “**Law**” means any applicable law, statute, regulation, ordinance or subordinate legislation in force from time to time to which a Party is subject.

(L) “**Maintenance Releases**” means in case of a License, software which has been produced primarily to fix defects in the Product.

(M) “**Order Form**” means an ordering document that specifies the Products or Services that Customer is purchasing from Uniphore and the fees to be paid by the Customer for such Products or Services. Each Order Form is deemed to incorporate the terms contained herein by reference. The Order Form and Statement of Work shall collectively be referred to as the “**Purchase Documents**.”

(N) “**Personal Data**” means any information provided to Uniphore in connection with this Agreement that, on its own or when associated with other information allows for direct or indirect identification of a natural person (a data subject), including: (i) name, address, location data, telephone number, social security/national identifying number, IP address, account numbers, account balances, account histories; or one or more factors specific to the physical physiological, genetic, mental, economic, cultural or social identity of a natural person; and (ii) any equivalent term under any applicable Data Privacy Laws.

(O) “**Product**” means (i) the object code version of Uniphore’s proprietary software, including any relevant artificial intelligence models, Documentation, as provided from time to time by Uniphore to Customer, including all Updates, Maintenance Releases and customizations thereto, which Customer purchases as described in an Order Form; and (ii) software-as-a-service products which are (a) made available for access online on a fully hosted basis and/or (b) installed locally, on Customer’s own servers and/or devices.

(P) “**Services**” means professional services including installation, integration or managed services, to be rendered by Uniphore to Customer, as agreed to between the parties in an executed Order Form and/or Statement of Work.

(Q) “**Specifications**” means the functionalities and technical requirements of the Product or Service as set out in the Documentation.

(R) “**Statement of Work**” or “**SOW**” means that document executed by the parties that sets out the detailed specifications of the Products or Services that Customer is licensing from Uniphore as ordered under the Order Form. Each SOW is deemed to incorporate the terms contained herein by reference.

(S) “**Territory**” means the territory(ies) as set out under the applicable Purchase Document.

(T) “**Uniphore**” shall mean (i) Uniphore Technologies North America Inc., if the Customer is incorporated in any country other than India and Japan; (ii) Uniphore Software Systems Private Limited, if the Customer is incorporated in India; and (iii) Uniphore Technologies Japan KK., if the Customer is incorporated in Japan.

(U) “**Updates**” means those certain updates, upgrades, security patches and enhancements to the Products, which shall be provided solely at Uniphore’s discretion on a periodic basis for no charge (unless otherwise stated by Uniphore).

## **2. PRODUCT LICENSE.**

### **2.1 Product License.**

Subject to Customer’s timely payment for the Products and/or Services as set out in the respective Purchase Document, Uniphore grants to the Customer a limited, non-exclusive, non-transferable, revocable right to access, install and use the Product(s) and Documentation as defined in the Purchase Document executed by Customer, solely for Customer’s internal business use and solely during the Term of this Agreement, subject to the terms and conditions contained herein and within the scope of use (including any Authorized User limits) as defined in any Purchase Document executed pursuant to this Agreement. Except as explicitly provided in this Agreement, the rights granted to Customer do not convey any rights, express or implied, including any Intellectual Property Rights, in or to the Products and/or Services.

### **2.2 Authorized Users**

Customer may allow its employees, consultants, contractors, subcontractors and agents (collectively, “Authorized Users”) to use the Product(s) and/or Services for Customer’s internal business operations. Customer shall ensure that each such Authorized User complies with the licensing terms and is subject to confidentiality no less restrictive than those contained herein. Customer shall remain liable under the terms of this Agreement for its Authorized User’s compliance with this Agreement. Customer agrees that the term “Authorized User” will include anyone to whom Customer has supplied or made available user identifications and passwords, and that, and that at no time during the Term of this Agreement, will Authorized Users share credentials for the purpose of accessing the Product. Customer further agrees that at no time during the Term of this Agreement, will the (i) aggregate number of Authorized User’s credentials exceed the usage restrictions in the applicable Order Form; (ii) total number of Authorized Users in each geographic location exceed the number of Authorized Users for such geography as stated in the Order Form, (iii) aggregate usage limit per Authorized Users exceed an average of 80 hours per month per Authorized Users. Any excess usage shall be billed to Customer at the per Authorized User price for the Product(s) as determined in the last effective Order Form between the parties.

### **2.3 Customer Restrictions.**

Customer shall not (i) modify, copy or create any derivative works based on the Product's features, functions, integrations, user interfaces, and/or graphics; (ii) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share, offer in a service bureau, or otherwise make available or grant any rights to the Products, Services or Documentation to any third party, other than to Authorized Users as permitted herein; (iii) adapt, reverse engineer, unlock, disassemble, decompile, or in any way decode any portion of the Product or attempt to access the source code of any Product, except to the extent explicitly permitted by Applicable Law; (iv) access the Service, Documentation or Deliverables in order to build or assist others to build or enhance any competitive product or service, whether or not such competitive products or services are meant for internal use or commercial sale; (v) use the Products or Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (vi) interfere with or disrupt the integrity or performance of any Products or Services; (vii) introduce malicious code in the Products, Services, Hosting Servers, networks, or other computing resources of Uniphore or any other third party or upload any information or data which negatively impacts the Products or Services or otherwise tamper with the security features of the Products or Services; (viii) remove Uniphore's proprietary rights notices; (ix) publish benchmarks or performance information about the Products and/or Services. Customer agrees that it will use the Products and/or Services strictly in accordance with the terms of this Agreement and Applicable Law and that any breach of this Section 2 shall constitute a material breach of the Agreement. Customer acknowledges that certain components of the Products are owned by Uniphore's partners and licensed to Uniphore subject to certain licensing terms between Uniphore and such partner; such components are sublicensed to Customer subject to the license terms applicable to such components.

## **2.4 Customer Responsibilities.**

Customer will (a) remain fully responsible for its Authorized Users' compliance with this Agreement; (b) use commercially reasonable efforts to prevent unauthorized access to or use of the Product; and (c) notify Uniphore immediately of any unauthorized access or use of the Product.

## **2.5 Suspension.**

Uniphore may, at any time, suspend the Customer's right to use the Product and/or the Services if, in the reasonable opinion of Uniphore: (i) the Customer or any of its Authorized Users have breached this Agreement; (ii) suspension is required for safety purposes or to prevent a security breach; (iii) suspension is necessary to prevent any damages or loss to Uniphore or any other third party; or (iv) payments are more than fifteen (15) days overdue.

## **2.6 Subcontractors.**

Uniphore may use subcontractors to perform any or all of its obligations under this Agreement, however Uniphore shall remain responsible for such subcontractors' compliance with this Agreement (including confidentiality terms contained herein) and for Uniphore's overall performance under this Agreement. Uniphore may provide the Products and/or Services from any location in the world which it deems appropriate.

## **3. PROVISION OF PRODUCTS.**

### **3.1 Product Support.**

Uniphore will provide standard maintenance and support to Customer pursuant to the support terms provided at [www.uniphore.com/customersupport](http://www.uniphore.com/customersupport).

### **3.2 Hosted Servers.**

If Uniphore hosts the Products and/or relevant Services on its Hosting Servers, Customer agrees that: (i) Uniphore will not provide any installation or other services in respect of the Product unless otherwise agreed to in writing between the parties; (ii) any Customer Data provided or obtained by Uniphore in the course of providing such Products and/or Services to Customer will be hosted on Hosting Servers; (iii) these Hosting Servers are provided by third party partners of Uniphore, as determined by Uniphore in its sole discretion; and (iv) such third party partners of Uniphore may have additional terms that are binding on Customer in Customer's use of the Products and Services, which additional terms will be provided to Customer, upon its request. Uniphore will provide Customer with two (2) weeks' notice prior to rolling out any Updates or new versions of the Product(s) which materially and adversely affect the Product(s). The Product shall be considered accepted upon being made available to the Customer, unless otherwise agreed to in writing between the Parties.

### **3.3 On-Premise Installation.**

If Customer opts for an on-premise deployment of the Product, Uniphore will deliver or otherwise provide the Product to Customer to install on Customer's servers and/or devices. The Product shall be considered accepted upon being made available to the Customer, unless otherwise agreed to in writing between the Parties. Customer agrees that if it chooses to install the Product on its premises, Uniphore will provide installation or other Services required for the Product only as set out in the relevant SOW and failure to provide such Services shall not relieve Customer of its obligation to pay any Fees for such Products, unless otherwise agreed to between the parties. Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Products and/or Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). and for implementing all Updates to the Products promptly after Uniphore makes such Updates available to Customer. Customer shall also be responsible for maintaining the security of the Equipment, Customer account, Authorized User account and passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer's account or the Equipment with or without Customer's knowledge or consent. Customer acknowledges and agrees that Uniphore will not be responsible for any defect or malfunction or failure of the systems on which Customer installs Uniphore's Products. Within thirty (30) days after each calendar month or upon request, Customer will provide to Uniphore a report generated from the Product(s) indicating (i) the number of Authorized Users in each geographic location with access to the Product(s), (ii) hours the Product(s) was used by each Authorized User, and (iii) any other

information reasonably requested by Uniphore to confirm Customer's license usage for the immediately preceding three (3) months.

## **4. CONFIDENTIALITY**

### **4.1 Confidentiality Obligations.**

"Confidential Information" includes, without limitation, the existence of this Agreement and any other information, regarding a party's business, products or services, which has been disclosed or made available to the other party, and which has been marked as confidential, or which should reasonably be understood to be confidential given the nature and circumstances of its disclosure. Each party agrees that during the term of this Agreement and thereafter: (a) it will only use Confidential Information as strictly required to perform its obligations hereunder or for its Use of the Products and/or Services under this Agreement; (b) it will not disclose Confidential Information to any third party (other than to its parent and/or subsidiary company, and its and their employees, contractors and/or professional advisors on a need-to-know basis who are bound by obligations of nondisclosure and limited use at least as stringent as those contained herein) without first obtaining the disclosing party's written consent; and (c) each Party will protect the other Party's Confidential Information by using the same degree of care and discretion as it uses with its own confidential information, but in no event less than reasonable care. Upon request by the disclosing Party, the receiving Party will return or destroy all copies of any Confidential Information. Confidential Information shall remain confidential for three (3) years from the date of disclosure or until and unless it falls under one of the exclusions in Section 4.2 of this Agreement, except for trade secrets which shall remain confidential for so long as such Confidential Information remains a trade secret. Unauthorized use or disclosure of Confidential Information may cause substantial harm for which damages alone are an insufficient remedy. The disclosing Party may seek appropriate equitable relief, in addition to other available remedies, for breach or threatened breach of this Section 4.

### **4.2 Confidentiality Exclusions.**

"Confidential Information" will not include any information that the receiving Party can establish, via its written records: (a) was independently developed without use of or reference to any Confidential Information; (b) was acquired from a third party which, to the receiving Party's knowledge, was not under confidentiality or non-disclosure restrictions; or (c) was generally known by or available to the public (through no fault of the receiving Party). The receiving Party may disclose Confidential Information to the extent required by Applicable Law or as otherwise legally compelled, provided that the receiving Party shall promptly notify the other Party before disclosing such Confidential Information, and shall provide reasonable assistance to the other party, upon request, in its efforts to obtain a protective order to protect the confidentiality of such information to be disclosed.

## **5. INTELLECTUAL PROPERTY**

### **5.1 Customer Data**

(A) Customer owns its Customer Data and all Intellectual Property Rights contained therein. Customer is solely responsible for the accuracy, quality, integrity, legality, reliability and appropriateness of Customer Data, and Customer represents and warrants that it will make all notifications and has and will maintain all rights, consents and permissions necessary to collect, store, transmit and use such Customer Data as contemplated by this Agreement, and to grant Uniphore the rights in this Agreement, all without violating or infringing (i) Laws, (ii) third-party rights (including intellectual property, confidentiality or privacy rights), or (iii) any Data Privacy Laws or privacy policies that apply to the Customer Data. Customer agrees to indemnify, defend and hold Uniphore harmless for any and all third party claims arising from an allegation that Customer Data was not collected in compliance with any applicable Laws, including Data Privacy Laws.

(B) Subject to any limitations contained herein, Customer grants Uniphore a non-exclusive, worldwide, royalty-free license to collect, copy, store, access, analyze, and use the Customer Data only as necessary for Uniphore to provide the Products and/or Services to the Customer and, on an anonymized and/or aggregated basis, if Customer utilizes the self-optimizing artificial intelligence capabilities of the Products, to further improve, enhance train or develop the capabilities of the Products, to track the Customer's usage of the Products and to track performance of the Products. Uniphore shall process any Personal Data in accordance with the Data Processing Addendum available at [https://www.uniphore.com/wp-content/uploads/2022/04/Uniphore-Data-Processing-Addendum\\_u-products.pdf](https://www.uniphore.com/wp-content/uploads/2022/04/Uniphore-Data-Processing-Addendum_u-products.pdf).

## **5.2 Uniphore Intellectual Property**

Uniphore will own and retain all Intellectual Property Rights in and to (a) the Product and Services (including all improvements or Updates); and (b) any software (including any software that is included in the Products and/or Services), applications, artificial intelligence models, inventions or other technology, scripts or code developed in connection with provision of the Products and/or Services and any Updates thereto ("**Uniphore-Owned Developed Material**").

## **5.3 Deliverables and Customization**

Any Deliverables, including those which incorporate or are derived from Uniphore-Owned Developed Material shall be owned by Uniphore, and Uniphore shall grant to Customer a non-exclusive license to use the Deliverables, and all Uniphore-Owned Developed Material contained therein, in connection with Customer's use of the Products or Services during the Term of this Agreement, subject to all other license terms contained herein. Customer agrees that if Customer Data is incorporated into such Deliverables, it shall be owned by Customer, and Customer hereby grants to Uniphore a royalty-free, worldwide, non-exclusive license to the Customer Data as incorporated into such Deliverables.

## **5.4 Third Party Material**

In performing its responsibilities under this Agreement, the Parties will not use or disclose any proprietary material of any third party ("**Third Party Material**") unless it has a legal right to do so. If a Party incorporates any Third Party Material into any of the materials designated as owned

by that Party, it will immediately secure for the other Party from the third party that owns the Third Party Material a nonexclusive, perpetual, irrevocable, royalty-free, paid-up, transferable, enterprise-wide, worldwide license to use such Third Party Material.

## **5.5 Feedback.**

Customer or its affiliates may, from time to time, provide suggestions, recommendations, enhancement requests, corrections or other feedback (“**Feedback**”) to Uniphore with respect to the Products and/or Services. Customer hereby grants to Uniphore a royalty free, worldwide, perpetual, irrevocable, transferable right to use, modify, distribute and incorporate such Feedback, without obligation or restriction, into the Products and/or Services (and without attribution of any kind).

# **6. TERMINATION**

## **6.1 Term and Termination**

(A) This Agreement shall continue for the longer of the Term as stated in the Purchase Document or for the period during which the Customer has access to or uses Uniphore Products, unless earlier terminated by the Parties in accordance with the terms hereunder.

(B) Either party may terminate a Purchase Document immediately upon written notice if the other Party:

(I) commits a material breach of this Agreement and fails to cure such breach within thirty (30) days of receipt of written notice by the non-breaching Party. Without limiting the foregoing, failure of Customer to pay any sum due to Uniphore under this Agreement shall be considered a material breach.

(II) files for bankruptcy, becomes insolvent, makes an assignment for the benefit of creditors, or otherwise has a receiver appointed to handle its assets or affairs.

(C) This Agreement shall automatically terminate if there is no Purchase Document active under this Agreement for a period of one hundred and eighty (180) days.

(D) Uniphore may terminate the Agreement with immediate effect if the Customer breaches any of its obligations under Section 2 (Access to Products and Services), Section 4 (Confidentiality) or Section 5 (Intellectual Property). Termination of this Agreement hereunder in whole or in part will not limit either Party from pursuing any other available remedies, including injunctive relief.

## **6.2 Effect of Termination**

Upon termination of a Purchase Order, Customer’s right to use the Products and/or Services as licensed under such Purchase Order shall immediately end. Upon termination of this Agreement, Customer’s right to use Uniphore’s Products and/or Services shall immediately end. Customer will permanently delete any and all instances of the Product from its and its Authorized Users’



computer systems and/or devices and Customer will return or destroy Uniphore's Confidential Information in accordance with the terms of this Agreement. Within ten (10) business days following termination, Customer shall pay any outstanding Fees and non-cancellable expenses due under the applicable Purchase Documents(s).

### **6.3 Survival**

Each party's respective obligations hereunder which by their nature would continue beyond the termination, cancellation or expiration of this Agreement shall survive. This includes, by way of example but not limited to, the obligations with respect to Confidential Information, payment, indemnification, limitation of liability and warranties.

## **7. FEES AND EXPENSES**

**If the Products and/or Services are purchased directly from Uniphore, this Section 7 shall apply.**

### **7.1 Fees and Invoicing.**

Customer shall pay Uniphore the charges as set forth in the Purchase Document (the "Fees"). Fees are invoiced per the schedule in the Purchase Document and reimbursable expenses are invoiced in arrears. All Uniphore invoices shall be due and payable by Customer within thirty (30) days after the invoice date. Fees for Renewal Terms are at Uniphore's then-current rates, regardless of any discounted pricing in a prior Purchase Document. Uniphore may assess a monthly interest at a rate of one and a half percent (1.5%) or the highest amount permitted by law, whichever is lower, on any outstanding amounts not timely paid by Customer under this Agreement. All invoices and payments shall be in U.S. dollars. Except as otherwise specifically provided in this Agreement, all Fees and expenses are non-cancelable and non-refundable.

### **7.2 Expenses.**

Customer will reimburse Uniphore for all pre-approved, reasonable expenses incurred by Uniphore in its provision of the Products and/or Services, including any transportation services, lodging, meals and out-of-pocket expenses.

### **7.3 No Set-off.**

Under no circumstances is Customer permitted to withhold, set-off, or reduce fees owed, or apply any credits against any amounts due and payable by Customer under this Agreement. The number of Authorized Users may only be reduced prior to the start of a Renewal Term and pursuant to an executed Purchase Document reflecting such adjustment between the parties.

### **7.4 Taxes.**

All Fees are exclusive of taxes and levies. Any transaction taxes that arise from use of the Product or on receipt of the Services under this Agreement shall be borne by the Customer, other

than taxes based on Uniphore's net income. If Uniphore has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Uniphore with a valid tax exemption certificate authorized by the appropriate taxing authority.

## **8. SECURITY**

Uniphore uses reasonable and appropriate technical and organizational measures designed to protect the Product, Services and/or Customer Data. Such measures constitute, to the extent permitted under applicable Law, the only obligations upon Uniphore with respect to employing security measures under this Agreement. The Customer agrees that it will not knowingly or deliberately take any action that may, directly or indirectly, cause a breach of such security measures used by Uniphore.

## **9. COMPLIANCE WITH LAWS**

### **9.1 Compliance Obligations**

(A) Each Party is responsible, at its cost and expense, for obtaining and maintaining in force all necessary regulatory approvals, licenses, and permits applicable to its and its affiliates' business or necessary for the Party to perform its obligations and exercise its rights under this Agreement.

(B) Each Party represents and warrants that it will comply at all times with all Laws relevant or applicable to its business and obligations under the Agreement.

(C) Each Party will bear the risk of and have financial responsibility for any change in Laws applicable to its business or the performance of its obligations under the Agreement.

### **9.2 Export**

The Products are subject to local and extraterritorial export control laws and regulations. The Parties will comply with such laws and regulations, including United States export laws and regulations, governing the use, export, re-export, and transfer of the Products and will obtain all required local and extraterritorial authorizations, permits or licenses necessary to export the Products. The export obligations under this clause shall survive the expiration or termination of this Agreement.

## **10. AUDIT**

Uniphore (or its designated auditor(s)) shall have the continued right to monitor the use of the Product and/or the Services and to audit, upon ten (10) days' written notice to Customer any systems upon which the Product(s) are installed to confirm that the Products and/or Services have been and are being used by Customer and any permitted third parties in accordance with the terms of this Agreement, including any scope of license terms, and the integrity of Customer's systems for which Customer is using the Products and/or Services. Customer shall cooperate

and, if applicable, shall ensure that its subcontractors and other Authorized Users cooperate with such audits. If any audit indicates that Customer is not in compliance with the terms of this Agreement, including any overuse or unauthorized use of the Products and/or Services, then Uniphore shall notify Customer of the amount of such overages and Customer shall promptly pay the additional amount due along with interest from the date of the overcharge. Each party shall be responsible for its own costs arising out of such audit, provided that if any audit reveals overusage during any 12-month period exceeding five percent (5%) of the fees charged to Customer hereunder during such period, then Customer shall reimburse Uniphore for the cost of such audit.

## **11. WARRANTIES.**

### **11.1 Warranty.**

Uniphore warrants to the Customer that the Product, when used strictly in accordance with the Documentation, shall materially conform to its Specifications for thirty (30) days from the date of such Products are made available to the Customer. If there is a breach of this warranty, Customer shall promptly, but no later than thirty (30) days after such breach, inform Uniphore in writing, with sufficient detail, as to the non-conforming features of the Product. As Customer's exclusive remedy and Uniphore's entire liability for a breach of the warranties set forth in this Section, Uniphore shall use commercially reasonable efforts to correct the non-conforming Product at no additional charge to the Customer. In the event Uniphore fails to successfully correct the Product within a reasonable time of receipt of written notice from Customer, then Customer shall be entitled to terminate this Agreement and/or the applicable Purchase Document and receive a refund for any prepaid, unused Fees for the non-conforming Product. The remedies set forth in this subsection shall be Customer's sole remedy and Uniphore's sole liability for breach of these warranties. This Product warranty shall not apply where any issues were caused by misuse, or unauthorized modifications or use of the Products and/or Services not strictly in accordance with the terms of the Agreement and Documentation.

### **11.2**

Uniphore warrants to the Customer that the Services, if performed by Uniphore, will be performed in a good and workmanlike manner consistent with applicable industry standards and any Deliverables created by such Services will materially conform to Specifications for a period of thirty (30) days from the date of delivery. As Customer's sole and exclusive remedy and Uniphore's entire liability for any breach of this warranty, Uniphore will promptly re-perform any Services that fail to meet this limited warranty.

### **11.3 DISCLAIMER**

THE WARRANTY SET FORTH IN SECTION 10.1 AND 10.2 ABOVE SHALL BE EXCLUSIVE AND IN LIEU OF ALL OTHER LIABILITIES, OBLIGATIONS, CONDITIONS AND/OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, SUITABILITY, TITLE OR FITNESS FOR A PARTICULAR PURPOSE OR USE, NON-INFRINGEMENT AS WELL AS ANY IMPLIED

AND/OR STATUTORY WARRANTIES ARISING FROM THE COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. LICENSOR MAKES NO WARRANTY AS TO THE RESULTS TO BE DERIVED FROM THE USE OF OR INTEGRATION WITH ANY PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT, OR THAT THE OPERATION OF ANY PRODUCTS OR SERVICES WILL BE SECURE, UNINTERRUPTED OR ERROR-FREE. THE PRODUCTS AND/OR SERVICES ARE PROVIDED TO THE CUSTOMER ON AN "AS-IS" BASIS. UNIPHORE DOES NOT REPRESENT THAT THE PRODUCT OR SERVICES MEET THE CUSTOMER'S REQUIREMENTS. CUSTOMER AGREES THAT IT IS NOT RELYING AND HAS NOT RELIED ON THE DELIVERY OF FUTURE FUNCTIONALITY IN OBTAINING A LICENSE FOR THE PRODUCT. THE CUSTOMER HAS INDEPENDENTLY EVALUATED THE PRODUCT AND/OR SERVICES AND DETERMINED THEIR SUITABILITY FOR ITS NEEDS. CUSTOMER AGREES THAT UNIPHORE SHALL NOT BE RESPONSIBLE FOR ANY DELAYS, FAILURE OR PROBLEMS RESULTING FROM USE OF THE INTERNET OR ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE OF UNIPHORE'S CONTROL, INCLUDING THIRD PARTY SYSTEMS.

## **12 LIMITATION OF LIABILITY.**

### **12.1**

IN NO EVENT SHALL UNIPHORE BE LIABLE FOR ANY LOSS OF PROFITS OR REVENUES OR COSTS OF PROCUREMENT OR SUBSTITUTE GOODS, SERVICES, RIGHTS OR TECHNOLOGY, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOSS OF BUSINESS, GOODWILL, REPUTATION OR LOSS OR CORRUPTION OF DATA), HOWEVER CAUSED AND WHETHER ARISING FROM CONTRACT, TORT, OR UNDER ANY OTHER THEORY OF LIABILITY, IRRESPECTIVE OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, UNIPHORE WILL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY THE PRODUCTS AND/OR SERVICES IF SUCH PRODUCTS AND/OR SERVICES ARE PROVIDED FOR NO FEE.

### **12.2**

EXCEPT AS PROVIDED IN SECTION 12.3, THE MAXIMUM AGGREGATE LIABILITY OF UNIPHORE UNDER OR IN RELATION TO THIS AGREEMENT FOR ANY AND ALL CLAIMS, LOSSES OR DAMAGES SHALL, IN NO EVENT, EXCEED, THE ACTUAL FEES PAYABLE BY CUSTOMER UNDER THE RELEVANT PURCHASE DOCUMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE FIRST CLAIM ARISES.

### **12.3**

EXCLUSIONS. THE LIMITATIONS OF LIABILITY SET FORTH IN SECTION 12.2 SHALL NOT APPLY WITH RESPECT TO (I) ANY DAMAGES ARISING FROM INTENTIONAL MISCONDUCT OR FRAUD (II) CUSTOMER'S OBLIGATIONS UNDER SECTION 2 (PRODUCT LICENSE), 5.1(B) AND 13 OR (III) TO ANY FEES OWED BY THE CUSTOMER UNDER THIS AGREEMENT OR RELEVANT PURCHASE DOCUMENT.

## 13. CUSTOMER OBLIGATION

Customer will defend Uniphore against any third party claims and indemnify Uniphore for any resulting costs or damages resulting from claims in respect of the Products and/or Services arising due to or in connection with (i) any modifications of the Products and/or Services or any parts thereof by any party other than Uniphore or its authorized agents; (ii) usage of the Products and/or Services in combination with any program, equipment or device not supplied, authorized or recommended, in writing by Uniphore; (iii) where Customer continues allegedly infringing activity after being notified or Customer fails to install any Updates or Maintenance Releases as provided by Uniphore; or (iv) where Customer's use of the Products and/or Services is not materially in compliance with the terms of this Agreement.

## 14. REFERENCES AND PUBLICITY

Neither party may use the name of the other in connection with any advertising or publicity materials or activities without the prior written consent of the other Party, except that Customer agrees that Uniphore may use Customer's name and/or logo on Uniphore's customer list and as part of its marketing efforts.

## 15. INSURANCE

During the Term of this Agreement, Uniphore shall maintain the following insurances in the types and minimum amounts mentioned below or as required by applicable law, whichever is greater:

Coverage Type	Minimum Limits of Liability
Commercial General Liability	\$ 1,000,000 each occurrence
	\$ 1,000,000 personal and advertising injury
	\$ 2,000,000 general aggregate
	\$ 2,000,000 products and completed operations aggregate
Worker's Compensation and Employer's liability	In accordance with the laws of the country, state, province, or territory exercising jurisdiction over employees
	\$1,000,000 each accident/ disease – each employee
Umbrella liability	\$5,000,000 each occurrence/ aggregate

Coverage Type	Minimum Limits of Liability
Professional liability/ Errors & Omissions Liability including where applicable, medical malpractice	\$5,000,000 each claim or occurrence/ aggregate
Third party crime	\$1,000,000 each occurrence
Cyber/ Network Privacy & Security Liability	\$5,000,000 each claim or occurrence/ aggregate

## 16. MISCELLANEOUS

### 16.1 Force Majeure

(A) “***Force Majeure Event***” means the occurrence of an event beyond the reasonable control of a Party that delays or prevents the Party, directly or indirectly, from performing its obligations under the Agreement provided that (i) the non-performing Party is without fault in causing or failing to prevent such occurrence, and (ii) such occurrence could not have been avoided by reasonable precautions and contingency plans and cannot be circumvented through the use of commercially reasonable alternative sources, workaround plans or other means.

(B) The Party whose performance is affected by a Force Majeure Event will promptly notify the other Party of the circumstances hindering its performance and of its plans and efforts to implement a workaround, in which case the affected Party will be excused from further performance or observance of the obligations so affected for as long as the Force Majeure Event continues, except for Customer’s payment of Fees, for which the time to make payment shall be extended for thirty (30) days or as otherwise agreed to between the parties. The affected Party will continue to use commercially reasonable efforts to perform whenever and to whatever extent is possible under the circumstances. The affected Party will also notify the other Party promptly when the Force Majeure Event has abated.

(C) A Party may terminate the Agreement if the other Party experiences a Force Majeure Event that continues for a period greater than sixty (60) days, and such Party experiencing the Force Majeure Event fails to resume its performance during that period.

### 16.2 Governing Law and Dispute Resolution.

Excluding conflict of laws principles, the law that will apply in any dispute or lawsuit arising out of or in connection with this Agreement and the courts that have exclusive jurisdiction over any such dispute or lawsuit shall be as set out below. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (where enacted) will not apply to the Agreement.

<b>If the Customer is incorporated in</b>	<b>Governing Law</b>	<b>Courts with exclusive jurisdiction</b>
Any country, other than India or Japan	California	United States District Court for Northern District or if that court does not have jurisdiction, then the State Courts in Santa Clara County in State of California
India	India	Chennai, India
Japan	Japan	Tokyo, Japan

### **16.3 Notices.**

Any legal notice or other communication required or permitted to be made or given under the Agreement will be in writing and sent by (a) personal delivery, in which case notice shall be deemed to have been given on the date of delivery; (b) by a nationally-recognized overnight delivery service, in which case notice shall be deemed to have been given the business day after deposit of such notice with such service, or (c) email, in which case notice shall be deemed to have been given upon the earlier of confirmed receipt (e.g., a party receiving an email response) or the next business day after confirmed sending of such email. All Notices will be sent to Uniphore at ATTN: General Counsel, Uniphore, 1001 Page Mill Road, Building 4, Suite 100-B, Palo Alto, CA 94304 with a cc to legal@uniphore.com and all notices to the Customer shall be sent to such address and email as designated by the Customer in the Purchase Document. Each Party may change its notice address upon five (5) business days' notice, with notice given in accordance with this Section.

### **16.4 Assignment**

Neither Party may assign or otherwise transfer the Agreement or any of the rights that they grant without the prior written consent of the other Party, except that Uniphore may assign this Agreement to its affiliates or to the surviving entity in the event of an acquisition of all or substantially all of its assets. Any purported assignment in violation of the preceding sentence will be void. The Agreement will be binding upon the Parties' respective successors and permitted assigns.

### **16.5 Independent Parties**

The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created by the Agreement.

### **16.6 Integration**

This Agreement constitutes the entire agreement between the Parties and supersedes all other prior or contemporaneous communications between the Parties (whether written or oral) relating to the subject matter of this Agreement. The Agreement may not be modified or amended, unless such amendment is executed in writing by an authorized representative of both Parties. This Agreement will prevail over terms and conditions of any Customer-issued purchase order, which

will have no force and effect, even if Uniphore accepts or does not otherwise reject the purchase order. Clauses intended to survive the termination or expiry of this agreement shall survive.

#### **16.7 Severability**

If any provision of this Agreement is held to be invalid or unenforceable, the invalidity or unenforceability will not affect the other provisions of the Agreement. In addition, if any provisions of this Agreement, for any reason, is declared to be unenforceable, the Parties will substitute an enforceable provision that, to the maximum extent possible under applicable law, preserves the original intentions and economic positions of the Parties.

#### **16.8 No Waiver**

No failure or delay by a Party in exercising any right, power or remedy will operate as a waiver of that right, power or remedy, and no waiver will be effective unless it is in writing and signed by the waiving Party. If a Party waives any right, power or remedy, the waiver will not waive any successive or other right, power or remedy the party may have under the Agreement.

#### **16.9 Third Party Beneficiaries**

There are no intended third party beneficiaries of any provision of the Agreement.